

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. § 6005 (b)(3)

Order No. 2008-A-0017

*PERSONALLY SERVED BY AN ENVIRONMENTAL
ENFORCEMENT OFFICER AND CERTIFIED MAIL*

Issued To:

Coatings, Inc.
Attn: Mr. Bruce D. Blair, President
30 Commerce Street
Wilmington, DE 19801

Registered Agent:

Mr. James W. Owen
Brandywood Plaza
2500 Grubb Road, Suite 240-B
Wilmington, DE 19810

Dear Mr. Blair:

This is to notify Coatings, Inc. ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 Del. C. Chapter 60 and Regulations adopted by the Secretary under the authority granted to him in 7 Del. C. Chapter 60 ("Regulations"), and accordingly, the Department is issuing a Notice of Administrative Penalty Assessment pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Respondent conducts sandblasting and painting operations that result in the emission of air contaminants such as volatile organic compounds ("VOC") at its facility currently located at 30 Commerce Street in Wilmington, Delaware. Respondent's facility was previously located at 210 Hay Road in Wilmington, Delaware. On May 12, 2003, the Department issued permit **APC-2000/0252-CONSTRUCTION/OPERATION(VOC RACT)(Amendment 1)** for a spray paint booth at the Hay Road facility.

In October 2006, the Department contacted Respondent by telephone to schedule a compliance inspection. During that phone call, the Department first learned that in late December of 2004 Respondent had moved its operations from the Hay Road facility to the current one located at 30 Commerce Street. Respondent informed the Department it began operation at the new location on January 1, 2005. Delaware law does not allow Respondent to

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transfer its operation from one location to another. Therefore Respondent should have applied for a new permit for the new location.

The Department conducted visits to the new site on October 26, 2006, and November 21, 2006. After reviewing Respondent's operations, the Department determined that, as with the spray painting operations at the previous site, emissions of VOC are greater than 10 pounds per day. Therefore, pursuant to Regulation No. 2, Respondent required a new permit. Respondent no longer uses a spray paint booth and now carries out its painting operations with spray guns. Respondent's sandblasting operations are conducted outside and, therefore, Regulation No. 2 required Respondent to obtain a registration rather than a permit for that operation. During the site visits, the Department asked Respondent to submit the appropriate permit application for the painting operations and registration form for the sandblasting operations, which it did on December 4, 2006. Thereafter, the permit application was found to be incomplete, and in an email dated December 27, 2006, the Department asked Respondent to provide additional information. Respondent did so on March 23, 2007. On April 17, 2007, the Department issued permit **APC-2007/0094-CONSTRUCTION/OPERATION(VOC RACT)** to Respondent for its operations at the new facility. A Notice of Violation was issued to Respondent on March 26, 2007.

FINDINGS OF FACT

1. In late December 2004, Respondent moved its spray painting and sand blasting operations in Wilmington, Delaware, from 210 Hay Road to 30 Commerce Street.
2. Respondent's spray painting and sand blasting operations at 30 Commerce Street in Wilmington, Delaware, caused or contributed to the discharge of air contaminants including VOCs.
3. Respondent began operating at the Commerce Street location on January 1, 2005, without obtaining a permit for its spray painting operation at that location from the Department.
4. Respondent submitted an incomplete permit application for its spray painting operations on December 4, 2006, but on March 23, 2007, provided additional information. At that time, the Department deemed Respondent's application complete.
5. On April 17, 2007, the Department issued Respondent permit **APC-2007/0094-CONSTRUCTION/OPERATION(VOC RACT)** for its operations at the 30 Commerce Street location.

REGULATORY AND PERMIT REQUIREMENTS

1. Seven *Del. C. § 6002(2)* states:

"Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke or vapor or any combination thereof, exclusive of uncombined water."

2. Seven *Del. C. § 6003 (a)(1)* states:

"No person shall, without first having obtained a permit from the Secretary, undertake any activity in any way which may cause or contribute to the discharge of an air contaminant."

3. Seven *Del. C. § 6003 (b)(1)* states:

"No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article which may cause or contribute to the discharge of an air contaminant..."

4. Regulation No. 2, Section 2.1 of the *Delaware Regulations Governing the Control of Air Pollution* (effective June 1, 1997) states in pertinent part as follows:

"...no person shall initiate construction, install, alter, or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department...."

5. Regulation No. 2, Section 7.1 of the *Delaware Regulations Governing the Control of Air Pollution* (effective June 1, 1997) states in pertinent part as follows:

"No person shall transfer a permit from one location to another, or from one piece of equipment to another..."

CONCLUSIONS

Based on the above, the Department has made the following conclusions:

1. Between January 1, 2005, and April 17, 2007, Respondent conducted sandblasting and painting operations at 30 Commerce Street in Wilmington, Delaware, that caused or contributed to the discharge of air contaminants such as volatile organic compounds ("VOC").
2. Respondent violated 7 *Del. C. § 6003 (a)(1)* by conducting spray paint operations at its new facility location without obtaining a permit from the Secretary.
3. Respondent violated 7 *Del. C. § 6003 (b)(1)* by using equipment in its spray paint operations at its new facility location without obtaining a permit from the Secretary.
4. Respondent violated Regulation No. 2, Section 2.1 by initiating spray paint operations at its new facility location without obtaining a permit from the Secretary.
5. Respondent violated Regulation No. 2, Section 7.1 by transferring its spray paint operations from 210 Hay Road to a new location at 30 Commerce Street without obtaining a new permit.

ASSESSMENT OF PENALTY

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$1,000 for the violations identified in this Assessment and Order and costs according to 7 *Del. C.* § 6005(c). Respondent shall submit a check to the Department in the amount of \$1,000 within 30 days from the receipt of this Assessment and Order for the aforementioned penalty. The check shall be made payable to the "State of Delaware" and shall be directed to: Valerie S. Csizmadia, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, DE 19904.

PUBLIC HEARING

This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 *Del. C.* § 6005(b)(3) and (c). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees. The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion.

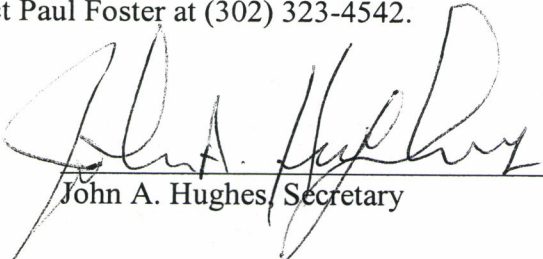
PRE-PAYMENT

Respondent may prepay the administrative penalty of \$1,000 and the Department's estimated costs in the amount of \$150 in the manner described in the attached waiver. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest the Assessment which shall become a final Order.

If you have any questions, please contact Paul Foster at (302) 323-4542.

4/21/08

Date



John A. Hughes, Secretary

cc: Valerie S. Csizmadia, Deputy Attorney General
James D. Werner, Director
Ali Mirzakhali, P.E., Program Administrator
Paul Foster, P.E., Program Manager
Nancy Terranova, Program Manager
Chandu Dalsania, Engineer
Dawn Minor, Paralegal
Jennifer Bothell, Enforcement Coordinator
Dover File

WAIVER OF STATUTORY RIGHT TO A HEARING

Coatings, Inc. hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Coatings, Inc.** will pay the administrative penalty in the amount of \$1,000 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Valerie S. Csizmadia, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and

2. **Coatings, Inc.** will reimburse the Department in the amount of \$150, which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Valerie S. Csizmadia, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

Coatings, Inc.

Date: _____

By: _____

Title: _____